



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0706; FRL-9991-79-Region 6]**

### **Air Plan Approval; New Mexico; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards and Repeal of State Regulations for Total Suspended Particulate**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) infrastructure certifications from the State of New Mexico and Albuquerque-Bernalillo County to address Clean Air Act (CAA or Act) section 110(a)(1) and (2) requirements for the 2015 ozone (O<sub>3</sub>) National Ambient Air Quality Standards (NAAQS). The submittals address how the existing SIP provides for the implementation, maintenance, and enforcement of the 2015 O<sub>3</sub> NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the New Mexico SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS. The EPA is also proposing to approve a SIP revision for the repeal of the New Mexico Ambient Air Quality Standards (NMAAQs) for total suspended particulate (TSP) in the New Mexico regulations incorporated into the SIP.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0706, at <https://www.regulations.gov> or via email to [ruan-lei.karolina@epa.gov](mailto:ruan-lei.karolina@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Karolina Ruan Lei, (214) 665-7346, *ruan-lei.karolina@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Karolina Ruan Lei, (214) 665-7346, *ruan-lei.karolina@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Karolina Ruan Lei or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets the NAAQS. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA-approved SIP regulations and control strategies are federally enforceable.

On October 26, 2015, the EPA revised the primary and secondary 8-hour O<sub>3</sub> NAAQS from 0.075 ppm to 0.070 ppm to provide increased protection of public health and the environment (82 FR 65291). The primary standards are set to protect human health, while secondary standards are set to protect public welfare.

Pursuant to section 110(a)(1) of the CAA, states are required to submit an i-SIP within three years after the promulgation of a new or revised NAAQS. Section 110(a)(2) of the CAA contains a list of specific elements the i-SIP must include to adequately address such new or revised NAAQS as applicable. On September 13, 2013, the EPA issued guidance addressing the i-SIP elements for NAAQS.<sup>1</sup> The State of New Mexico and Albuquerque-Bernalillo County i-SIP certifications, submitted on November 1, 2018, and September 24, 2018, respectively, provide demonstrations of how the existing New Mexico SIP meets the applicable section 110(a)(2) requirements for the 2015 O<sub>3</sub> NAAQS. Our technical evaluation of these submittals is provided in the Technical Support Document (TSD) for this action.<sup>2</sup>

Additionally, on November 16, 2018, the State of New Mexico provided updated regulations to the New Mexico SIP that pertain to the repeal of the air quality standards for TSP in New

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<sup>1</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)”. Memorandum from Stephen D. Page, U.S. EPA, Office of Air Quality Planning and Standards. September 13, 2013.

<sup>2</sup> The TSD for this action can be accessed through [www.regulations.gov](http://www.regulations.gov) (Docket No. EPA-R06-OAR-2018-0706).

Mexico. The TSP NMAAQs were first adopted into the New Mexico regulations in 1969 and have not been revised since their original promulgation. On April 30, 1971, the EPA established primary and secondary NAAQS for particulate matter, with the indicator set as TSP (36 FR 8186). TSP was defined as particulate matter up to a nominal size of 25 to 45 micrometers ( $\mu\text{m}$ ). The EPA, to better protect human health and the public welfare, replaced the indicator for particulate matter from TSP to  $\text{PM}_{10}$  on July 1, 1987, and established standards for fine particulate matter ( $\text{PM}_{2.5}$ ) on July 18, 1997 (52 FR 24634 and 62 FR 38652).  $\text{PM}_{10}$  and  $\text{PM}_{2.5}$  refer to particles with an aerodynamic diameter less than or equal to a nominal 10 and 2.5  $\mu\text{m}$ , respectively. The 24-hour  $\text{PM}_{2.5}$  standard was revised in 2006, and the annual  $\text{PM}_{2.5}$  standard was revised in 2012 (71 FR 61144, October 17, 2006 and 78 FR 3086, January 15, 2013).

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA), or any other applicable requirement of the Act. The New Mexico SIP revision submitted on November 16, 2018, includes a demonstration that the repeal of the NMAAQs for TSP will not interfere with the attainment and maintenance of the NAAQS or any other CAA requirement.

## **II. The EPA's Evaluation of New Mexico's and Albuquerque-Bernalillo County's i-SIP**

The State's and County's submissions on November 1, 2018, and September 24, 2018, demonstrate how the existing New Mexico SIP meets the infrastructure requirements for the 2015  $\text{O}_3$  NAAQS. As mentioned in the previous section, a detailed discussion of our evaluation can be found in the TSD for this action, accessible through [www.regulations.gov](http://www.regulations.gov) (Docket No. EPA-R06-OAR-2018-0706). Below is a summary of the EPA's evaluation of the New Mexico i-

SIP and Albuquerque-Bernalillo County i-SIP for each applicable element of 110(a)(2)(A) through (M).

(A) *Emission limits and other control measures:* The CAA section 110(a)(2)(A) requires the SIP to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.<sup>3</sup>

The New Mexico *Environmental Improvement Act* (EIA), codified in Chapter 74, Article 1 of the New Mexico Statutes Annotated (NMSA) 1978, created the New Mexico Environment Department (NMED) and the New Mexico Environmental Improvement Board (EIB). The New Mexico *Air Quality Control Act* (AQCA), codified in NMSA 1978, Chapter 74, Article 2, together with the Albuquerque and parallel Bernalillo County Joint Air Quality Control Board Ordinances (collectively referred to as the “AQCA and Ordinances”) authorized creation of the Joint Air Quality Control Board (Air Board) and the Albuquerque Environmental Health Department (EHD). The NMED has jurisdiction over all of New Mexico except for Albuquerque-Bernalillo County. The NMED, the EIB, and the State refer to the authorities in New Mexico outside of Bernalillo County, and the EHD, the Air Board, and the County refer to the authorities within Bernalillo County.

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<sup>3</sup> The specific nonattainment area plan requirements of CAA section 110(a)(2)(I) are subject to the timing requirements of CAA section 172, not the timing requirement of CAA section 110(a)(1). Thus, CAA section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 O<sub>3</sub> NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of CAA section 110(a)(2)(A). In the context of an infrastructure SIP, the EPA is not evaluating the existing SIP provisions for this purpose. Instead, the EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The AQCA delegates legislative authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the AQCA to attain and maintain the NAAQS and prevent or abate air pollution. The AQCA also designates the NMED as the State's air pollution control agency and the AQCA and the EIA provides the NMED with enforcement authority. Similarly, Albuquerque-Bernalillo County's enforceable emissions limitations and other control measures are authorized by the AQCA and Ordinances, which give legislative authority to the Air Board to attain and maintain the NAAQS. The AQCA and Ordinances also state that the EHD is the administrative agency for the EIB and give the EHD authority to enforce air quality regulations. The authority delegated by the New Mexico statutes and ordinances has been employed to adopt and submit multiple revisions to the New Mexico SIP.

New Mexico's enforceable emission limitations and other control measures for O<sub>3</sub> and its precursors were promulgated by the EIB and can be found in Title 20, Chapter 2 of the New Mexico Administrative Code (NMAC) Parts 3, 5, 7, 8, 10, 32-34, 72-75, 79, and 99. Albuquerque-Bernalillo County's enforceable emissions limitations and other control measures for any NAAQS, including O<sub>3</sub> and its precursors, can be found in Title 20, Chapter 11 NMAC Parts 1-8, 20-22, 39-41, 43, 46-47, 49, 60-61, 63-68, 90, 100, and 102-103. New Mexico and Albuquerque-Bernalillo County regulations that have been approved in the New Mexico SIP can be found listed in 40 CFR 52.1620(c).

Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. To satisfy element A, an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS. New Mexico and Albuquerque-Bernalillo County have each provided the relevant provisions that have been

approved into the New Mexico SIP. The EPA is therefore proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(A) of the CAA with respect to the 2015 O<sub>3</sub> NAAQS.

*(B) Ambient air quality monitoring/data system:* Section 110(a)(2)(B) of the CAA requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

The AQCA provides the authority necessary for the NMED and the EHD to collect air monitoring data, quality-assure the results, and report the data in order to fulfill the requirements of CAA section 110(a)(2)(B) (NMSA 1978, section 74-2-5.1).

New Mexico and Albuquerque-Bernalillo County each maintain and operate air monitoring networks to measure ambient levels of pollutants, including O<sub>3</sub>. All monitoring data is measured using EPA-approved methods and subject to EPA quality assurance requirements. The NMED and the EHD submit all required data to the EPA, following EPA rules. These networks have been approved into the SIP (46 FR 4005, August 6, 1981) and they undergo recurrent annual review by the EPA.<sup>4</sup> In addition, the NMED and the EHD conduct recurrent assessments of their monitoring networks every five years, which include an evaluation of ambient monitoring for O<sub>3</sub>, as required by EPA rules. The most recent of these 5-Year Monitoring Network Assessments were conducted by the NMED and the EHD in 2015, and the EPA reviewed and commented on these reviews. The comment letters are in the docket for this rulemaking.<sup>5</sup> The NMED and the

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<sup>4</sup> Copies of the 2018 Annual Air Monitoring Network Plans and the EPA's approval letters for New Mexico and Albuquerque-Bernalillo County are included in the docket for this proposed rulemaking.

<sup>5</sup> Copies of the 2015 5-Year Ambient Monitoring Network Assessments, most recent Annual Network Plans, and EPA's approval letters for New Mexico and Albuquerque-Bernalillo County are included in the docket for this proposed rulemaking.

EHD websites provide the monitor locations and post past and current concentrations of criteria pollutants measured in these networks of monitors.<sup>6</sup>

In summary, New Mexico and Albuquerque-Bernalillo County meet the requirements to: establish, operate, and maintain an ambient air monitoring network; collect and analyze the monitoring data; and make the data available to the EPA upon request. The EPA is proposing to find that the current New Mexico SIP meets the requirements of CAA section 110(a)(2)(B) with respect to the 2015 O<sub>3</sub> NAAQS.

*(C) Program for enforcement of control measures:* The CAA section 110(a)(2)(C) requires SIPs include the following three elements: (1) A program providing for enforcement of the measures in subsection A of this action, above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.*, state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>7</sup>

*(1) Enforcement of SIP Measures.* As noted in (A), the AQCA provides authority for the NMED and the EHD to enforce the requirements of the AQCA and any regulations of the EIB, permits or final compliance orders. Its statutes also provide the NMED and the EHD with general enforcement powers. Among other things, the NMED and the EHD can file lawsuits to compel compliance with statutes and regulations; commence civil actions; issue field citations, conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue

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<sup>6</sup> For New Mexico air monitors and current air quality, see <http://nmaqinow.net/>. For Albuquerque-Bernalillo County air monitors and current air quality, see <http://www.cabq.gov/airquality/air-quality-monitoring>.

<sup>7</sup> As discussed in further detail in the TSD.



criminal prosecutions; conduct investigations; enter into remediation agreements; and issue emergency cease and desist orders. The AQCA also provides additional enforcement authorities and funding mechanisms (NMSA 1978, sections 74-2-12, 74-2-2, and 74-1-6(F)).

(2) *Minor New Source Review*. Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. Both the New Mexico (78 FR 15296, March 11, 2013) and Albuquerque-Bernalillo County (69 FR 78312, December 30, 2004) minor NSR permitting requirements are approved as part of the SIP.<sup>8</sup>

(3) *Prevention of Significant Deterioration (PSD) permit program*. The Albuquerque-Bernalillo County and New Mexico PSD program portions of the SIP cover all NSR regulated pollutants as well as the requirements for the 2015 O<sub>3</sub> NAAQS and have been approved by the EPA (80 FR 52401, August 31, 2015, and 78 FR 15296, March 11, 2013).<sup>9</sup>

(D) *Interstate transport, and interstate and international pollution abatement*: Under CAA section 110(a)(2)(D)(i), there are four requirements the SIP must include relating to interstate transport. The first two of the four requirements are outlined in CAA section 110(a)(2)(D)(i)(I) and require that the SIP contain adequate provisions prohibiting emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS, and (2) interfere with maintenance of the NAAQS. The third and fourth requirements are outlined in CAA section 110(a)(2)(D)(i)(II) and require that the SIP contain adequate provisions prohibiting emissions to

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<sup>8</sup> The EPA is not proposing to approve or disapprove the existing New Mexico or Albuquerque-Bernalillo County minor NSR programs to the extent that it may be inconsistent with the EPA's regulations governing this program. The EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for the EPA to approve the infrastructure SIP for element C (76 FR 41075 [41076-41079], July 13, 2011). The EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

<sup>9</sup> As discussed in further detail in the TSD.

other states which will (1) interfere with measures required to prevent significant deterioration or (2) interfere with measures to protect visibility.

The State of New Mexico and Albuquerque-Bernalillo County submittals did not include how the current New Mexico SIP meets CAA section 110(a)(2)(D)(i)(I) requirements. The NMED and the EHD stated that they are currently working with the EPA to address this requirement as it relates to the 2015 O<sub>3</sub> NAAQS as a sufficient basis for a submittal addressing these requirements does not yet exist. The NMED and the EHD indicate that they will continue to work with the EPA to develop an appropriate submittal for this element.

As the submittals from the State of New Mexico and Albuquerque-Bernalillo County did not include how the New Mexico SIP meets CAA section 110(a)(2)(D)(i)(I) requirements, we will only discuss how the submittals address CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii).

The SIP submission stated that as noted in subsection C of this action, shown above, Albuquerque-Bernalillo County and New Mexico each have comprehensive EPA-approved PSD programs meeting the prevention of significant deterioration of air quality requirement of CAA section 110(a)(2)(D)(i)(II) (80 FR 52402, August 31, 2015, and 80 FR 40915, July 14, 2015, respectively). With respect to the visibility element of CAA section 110(a)(2)(D)(i)(II), both Albuquerque-Bernalillo County and New Mexico have a regional haze program in place that fully meets the requirements of 40 CFR 51.309 that have been approved by the EPA into the New Mexico SIP. The Albuquerque-Bernalillo County regional haze SIP was approved by EPA on November 29, 2012 (77 FR 71119). The New Mexico regional haze SIP was approved in two actions; the first action, promulgated on November 27, 2012, approved the majority of the regional haze SIP (77 FR 70693), and the second action, promulgated on October 9, 2014, addressed best available retrofit technologies (79 FR 60985). As we have approved both New

Mexico and Albuquerque-Bernalillo County comprehensive PSD programs and regional haze plans, we propose to approve the current SIP meets CAA section 110(a)(2)(D)(i)(II) requirements.

CAA section 110(a)(2)(D)(ii) requires that the SIP contain adequate provisions ensuring compliance with the applicable requirements of sections 126 (relating to interstate pollution abatement) and 115 (relating to international pollution abatement). As stated in their submittals, New Mexico and Albuquerque-Bernalillo County meet the section 126 requirements as (1) they have fully approved PSD SIPs (Albuquerque-Bernalillo County, 80 FR 52401, August 31, 2015 and New Mexico, 78 FR 15296, March 11, 2013), which include notification to neighboring air agencies of potential impacts from each new or modified major source, and (2) no source or sources have been identified by the EPA as having any interstate impacts under CAA section 126 in any pending action related to any air pollutant. New Mexico and Albuquerque-Bernalillo County meet CAA section 115 requirements as there are no findings by the EPA that New Mexico or Albuquerque-Bernalillo County air emissions affect other countries. Therefore, we propose to approve that the current SIP meets requirements for CAA section 110(a)(2)(D)(ii).

*(E) Adequate authority, resources, implementation, and oversight:* CAA section 110(a)(2)(E) requires that the SIP provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) compliance with requirements relating to state boards as required under section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. Both subsections A and E

of this action address the requirement that there is adequate authority and no legal impediments to implement and enforce the SIP.

The i-SIP submissions for the 2015 O<sub>3</sub> NAAQS describe the SIP regulations governing the various functions of personnel within the NMED, the EIB, the EHD, and the Air Board, including the administrative, technical support, planning, enforcement, and permitting functions of the program. (NMSA 1978, sections 9-7A-6(B)(4), 9-7A-11(A), 74-2-5.1(F) and 74-2-5.2).

With respect to funding, the AQCA requires the NMED to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs and authorizes the NMED to collect additional fees necessary to cover reasonable costs associated with processing of air permit applications (NMSA 1978, sections 9-7A-6(B)(4), 9-7A-11(A), 74-2-5.1(F) and 74-2-5.2). The EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP. With respect to funding for the EHD and the Air Board, the resources to carry out the plan are provided through general funds, permit fees and the CAA grant process. Permit fees are collected under the authority of NMSA 1978, section 74-2-7.

The State and County addressed element E requirements pertaining to CAA section 128 requirements for state boards. The EIA, NMSA 1978, section 74-1-4, provides that the EIB contain at least a majority of members who represent the public interest and do not derive any “significant portion” of their income from persons subject to, or who appear before the board, on issues related to the CAA or the AQCA. Likewise, Albuquerque-Bernalillo County require that the Air Board follows the same requirements under the AQCA, NMSA 1978, section 74-2-4(B). The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

Regarding assurances concerning reliance on local government agencies, the State indicates that the City of Albuquerque-Bernalillo County is authorized to carry out all portions of New Mexico's SIP within the jurisdictional boundaries of Bernalillo County. The Albuquerque-Bernalillo County SIP provisions are part of the New Mexico SIP.<sup>10</sup> However, the NMED and the EIB retain oversight authority in the event the local authority fails to act (AQCA, NMSA 1978, section 74-2-4).

Based upon review of the SIP submissions for the 2015 O<sub>3</sub> NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in the New Mexico SIP, the EPA believes that the requirements of CAA section 110(a)(2)(E) are met.

*(F) Stationary source monitoring system:* CAA section 110(a)(2)(F) requires that the SIP provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. Element F requires the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The AQCA authorizes the EIB and the Air Board to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions (NMSA 1978, section 74-2-5(C)(6)). There are also SIP-approved state regulations pertaining to sampling and testing and

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<sup>10</sup> See approved Albuquerque-Bernalillo County statutes in the New Mexico SIP at 40 CFR 52.1620(e).

requirements for reporting of emissions inventories (20.2 NMAC Parts 5,7-8, 10-20, 30-34, 40-41, and 72-74). For the County, SIP rules establish general requirements for maintaining records and reporting emissions (20.11.47 NMAC).

The NMED uses the data received to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with SIP regulations and additional EPA requirements. The SIP requires this information be made available to the public. The County also has provisions concerning the handling of confidential data and proprietary business information; these provisions exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources (20.11.90 NMAC).

From reviewing the State and County submittals and the relevant regulations and statutes, we are proposing that the New Mexico SIP meets the requirements of CAA section 110(a)(2)(F).

*(G) Emergency authority:* CAA section 110(a)(2)(G) requires a demonstration that the state has the authority to restrain any source from causing imminent and substantial endangerment to public health or welfare or the environment. The SIP must include an adequate contingency plan to implement such authorities as necessary.

The AQCA provides the NMED and the EHD with authority to address environmental emergencies, inclusive of contingency plans to implement emergency episode provisions.

Upon a finding that an owner or operator is unreasonably affecting the public health, safety or welfare, or the environment, the AQCA authorizes the NMED and the EHD to, after a reasonable attempt to give notice, declare a state of emergency and issue without hearing an emergency special order directing the owner or operator to cease such pollution immediately (NMSA 1978, section 74-2-10).

New Mexico promulgated the Air Pollution Episode Contingency Plan for New Mexico, which includes contingency measures, and these provisions were approved into the SIP on August 21, 1990 (55 FR 34013). Similarly, the Air Board adopted into the SIP the Air Pollution Episode Contingency Plan for Albuquerque-Bernalillo County, which covers air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons (56 FR 38073, August 12, 1991).

Based upon review of the infrastructure SIP submissions, the EPA believes that the requirements of CAA section 110(a)(2)(G) are met.

*(H) Future SIP revisions:* CAA section 110(a)(2)(H) requires that states must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

The State of New Mexico and Albuquerque-Bernalillo County each responded that the New Mexico SIP is a compilation of regulations, plans, and submittals that act to improve and maintain air quality in accordance with national standards. The authority to develop or revise the SIP is based on the authority to adopt new regulations, revise existing regulations, and conduct business in a manner to meet the NAAQS. NMSA 1978, section 74-7-5 gives the board authority to perform these functions. The AQCA authorizes and requires the State and County to revise its SIP, as necessary, to account for: revisions of the NAAQS, newly promulgated NAAQS, attaining and maintaining the NAAQS, abating air pollution, adopting more effective methods of attaining the NAAQS, and responding to EPA SIP calls concerning NAAQS adoption or implementation (NMSA 1978, sections 74-2-5(B)(1) and 74-2-5.2(B)). Nothing in New Mexico's statutory or regulatory authority prohibits the State or Albuquerque-Bernalillo County from

revising the SIP in the event of a new or revised NAAQS. Based upon review of the infrastructure SIP submissions, the EPA believes that the requirements of CAA section 110(a)(2)(H) are met.

*(I) Nonattainment areas:* The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

The EPA does not expect infrastructure SIP submissions to address element I. The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for CAA section 110 infrastructure elements. Instead, the EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

*(J) Consultation with government officials, public notification, PSD and visibility protection:* The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) prevention of significant deterioration of air quality and (4) visibility protection.

*(1) Interagency consultation.* As required by the AQCA, there must be a public hearing before the adoption of any regulations or emission control requirements and all interested persons must be given a reasonable opportunity to submit data, view documents, or argue orally or in writing and to examine testimony of witnesses from the hearing (NMSA 1978, sections 74-2-6(B), (C), and (D)). In addition, the AQCA provides for the power and duty to “advise,



consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control.” (NMSA 1978, section 74-2-5.2(B)). Furthermore, New Mexico's PSD SIP rules mandate public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Managers whose lands may be affected by emissions from the source or modification. The State's Transportation Conformity SIP rules also provide procedures for interagency consultation, resolution of conflicts, and public notification. These rules apply to both New Mexico and Albuquerque-Bernalillo County.

(2) *Public notification.* The submitted revisions provide the SIP regulatory citations requiring both the NMED and the EHD to regularly notify the public of instances or areas in which any NAAQS are exceeded, advise the public of the health hazards associated with such exceedances, and enhance public awareness of measures that can prevent such exceedances and ways in which the public can participate in efforts to improve air quality. Additional public notification concerning compliance with the NAAQS is accomplished by real-time publishing of air quality data from NMED’s monitoring network to the NMED website, and from Albuquerque-Bernalillo County’s monitoring network available via the EPA’s Air Quality System Data Mart website.

(3) *PSD.* The PSD requirements here are the same as those addressed under subsection C of this action.

(4) *Visibility protection.* The New Mexico SIP requirements for both the state and Albuquerque-Bernalillo County relating to visibility and regional haze are not affected when the EPA establishes or revises a NAAQS. Therefore, the EPA has determined that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are

no newly applicable visibility protection obligations pursuant to infrastructure element J after the promulgation of a new or revised NAAQS.

Based upon the review of the infrastructure SIP submissions for the 2015 O<sub>3</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in New Mexico's SIP, the EPA believes that the requirements of CAA section 110(a)(2)(J) are met.

*(K) Air quality and modeling/data:* Element K requires that the SIP provide for performing air quality modeling to predict the effects on ambient air quality from emissions of any NAAQS pollutant, and for submission of such data to the EPA upon request.

The NMED and the EHD have the duty, authority, and technical capability to conduct air quality modeling, pursuant to the AQCA, in order to assess the effect on ambient air quality of relevant pollutant emissions; and can provide relevant data as part of the permitting and NAAQS implementation process (NMSA, 1978 section 74-2-5.2(B)). The NMED and the EHD follow EPA guidelines for air dispersion modeling. Upon request, the NMED and the EHD will submit current and future data relating to air quality modeling to the EPA.

The NMED and the EHD have the power and duty under the AQCA to investigate and develop facts, which provide for the functions of environmental air quality assessment (NMSA 1978, section 74-2-5.1(A)). Past modeling and emissions reductions measures have been submitted by the State and County and approved into the SIP. The AQCA also authorizes and requires the NMED to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

Based upon review of the infrastructure SIP submissions for the 2015 O<sub>3</sub> NAAQS, the EPA finds that New Mexico and Albuquerque-Bernalillo County, have adequate infrastructure needed to address CAA section 110(a)(2)(K).

*(L) Permitting fees:* The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under CAA section 504, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by the EPA.

For New Mexico, the AQCA authorizes the EIB to establish an emission fee schedule and a construction permit fee schedule to recover the reasonable costs of evaluating permit applications, and issuing and enforcing permits (NMSA 1978, section 74-2-7). Relevant New Mexico regulations that have been approved into the SIP include 20.2 NMAC Parts 75 and 71 (as it relates to Part 75), which cover construction and operating permit fees (77 FR 18923, March 29, 2012). For Albuquerque-Bernalillo County, the relevant regulations covering permit fees that have been approved by the EPA include 20.11 NMAC Parts 2 and 41 (77 FR 30900, May 24, 2012, and 82 FR 29421, June 29, 2017). In addition, see subsection E of this action, above, for the description of the mandatory collection of permitting fees outlined in the SIP for the entire state of New Mexico.

Based upon review of the infrastructure SIP submissions for the 2015 O<sub>3</sub> NAAQS, the EPA proposes that the requirements of CAA section 110(a)(2)(L) are met.

*(M) Consultation/participation by affected local entities:* CAA section 110(a)(2)(M) requires that the SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See subsection J (1) and (2) of this action for a discussion of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. For New Mexico, the AQCA requires initiation of cooperative action between local authorities and the NMED, between one local authority and another, or among any combination of local authorities and the NMED for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions (NMSA 1978, section 74-2-5.2(B)). For, Albuquerque-Bernalillo County, the AQCA and implementing regulations provide for consultation with local political subdivisions affected by the Albuquerque-Bernalillo County elements of the New Mexico SIP.

The EPA is proposing to find that the Albuquerque-Bernalillo County and New Mexico submittals meet the requirements of CAA section 110(a)(2)(M) for the 2015 O<sub>3</sub> NAAQS.

### **III. The EPA's Evaluation of New Mexico's Total Suspended Particulate Standard Repeal**

On November 16, 2018, New Mexico submitted a SIP revision that contains modifications to the NMAC for inclusion into the SIP. The modifications consist of a repeal of the NMAAQs for TSP contained in section 109 of 20.2.3 NMAC, *Ambient Air Quality Standards*. New Mexico demonstrates how the SIP revision will not negatively impact the attainment status of the state's particulate matter attainment areas or any other CAA requirement.<sup>11</sup>

The submittal indicates that the ambient air quality standards for TSP are no longer consistent with modern air quality regulations. The NMED's Air Quality Bureau has conducted a

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<sup>11</sup> See the State of New Mexico's November 16, 2018, submittal, Exhibit 6: Demonstration of Noninterference Under Federal Clean Air Act, Section 110(l), available in the docket for this action.

thorough analysis of the particulate standards in 20.2.3.109 NMAC and has concluded that the standards: (1) Can be repealed without a relaxation of emissions controls or an adverse effect on air quality, (2) are not necessary to maintain the NAAQS for particulate matter in New Mexico, and (3) will not impact the attainment status of the New Mexico's particulate matter attainment areas or any other CAA requirement. In the submittal, the NMED concluded that sufficient rules and procedures other than section 109 from 20.2.3 NMAC are in place to ensure compliance with the particulate matter NAAQS.

The TSP NAAQS were replaced in 1987 by  $PM_{10}$  standards, and  $PM_{10}$  and  $PM_{2.5}$  are the current indicators for particulate matter. New Mexico has a fully approved SIP that meets CAA infrastructure requirements for the 2006 and 2012  $PM_{2.5}$  NAAQS that address health and welfare concerns for particulate matter (78 FR 4337, January 22, 2013 and 83 FR 12493, March 22, 2018). In the submittal, New Mexico also lists regulations that are still in place to address nuisance particulate matter. The NMED rules that limit and control emissions of particulate matter include enforceable emission limits, control measures, permits, fees, and compliance schedules and are found at 20.2 NMAC Parts 5, 7, 8, 10, 13-19, 22, 60-61, 65-66, 72-75, 79, and 99.

The repeal of the TSP NMAAQs will not affect ongoing efforts to reduce  $PM_{10}$  levels in the Anthony, New Mexico  $PM_{10}$  nonattainment area (Doña Ana County). As stated in the State's submittal, the NMED determined that all point and area sources of  $PM_{10}$ , in or affecting the area, to be de minimis, except for unpaved roads, unvegetated and sparsely vegetated areas, and range lands. The paving of roads was determined to be economically infeasible, the enhancement of ground cover in the region to be technologically infeasible, and emissions from range lands to be nonanthropogenic. The NMED is developing a dust mitigation plan for both

Doña Ana County and Luna County, and is also developing a fugitive dust rule that will be applicable in areas of the State requiring a mitigation plan in accordance with 40 CFR 51.930.

After evaluating the State's submittal, the EPA agrees with the State's conclusion that the removal of the TSP NMAAQs from the New Mexico SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

#### **IV. Proposed Action**

The EPA is proposing to approve the November 1, 2018, and September 24, 2018, submittals for New Mexico and Albuquerque-Bernalillo County pursuant to the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2015 O<sub>3</sub> NAAQS. Table 1 below outlines the specific actions the EPA is proposing to approve. The EPA is also proposing to approve revisions to the New Mexico SIP pertaining to the repeal of the TSP ambient air quality standard for the State of New Mexico.

*Table 1- Proposed Action on New Mexico Infrastructure SIP Submittal for Various NAAQS*

Element	2015 O <sub>3</sub>
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Prohibit emissions to other states which will (1) significantly contribute to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS	NS
(D)(i)(II): Prohibit emissions to other states which will (3) interfere with PSD requirements or (4) interfere with visibility protection	A
(D)(ii): Interstate and international pollution abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+

(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table:

A - Approve;

+ - Not germane to infrastructure SIPs

NS - No submittal. EPA may take future action in a separate rulemaking action.

Based upon our review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the Albuquerque-Bernalillo County, New Mexico or New Mexico SIP, the EPA finds that New Mexico and Albuquerque-Bernalillo County have the infrastructure in place to address required elements of CAA sections 110(a)(1) and (2) to ensure that the 2015 O<sub>3</sub> NAAQS are implemented throughout the State of New Mexico, including Albuquerque-Bernalillo County.

We are also proposing to approve the submitted revisions to the New Mexico SIP that provide modifications to the NMAC and update the federally approved New Mexico SIP accordingly. The approved SIP revision will repeal the TSP NMAAQs from section 109 of 20.2.3 NMAC, as the EPA found that such a revision will not adversely affect the attainment of applicable CAA requirements.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).



In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 10, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

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